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C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 000218

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E.O. 12958: DECL: 01/23/2032  
TAGS: [CH](#) [ECON](#) [ETRD](#) [HK](#) [KIPR](#) [TW](#)  
SUBJECT: HONG KONG'S WAIT AND SEE APPROACH ON ACTA:  
SENSITIVE ON TAIWAN

Classified By: E/P Chief Laurent Charbonnet, Reasons: 1.4 (b,d)

11. (C) Summary: Hong Kong government (HKG) officials expressed initial reticence about joining the Anti-Counterfeiting Trade Agreement (ACTA) during a digital video conference (DVC) held on January 12. The HKG queried officials from the USTR and the United States Patent and Trade Office (USPTO) on the ACTA proposal, including the names of other potential ACTA partners, compliance issues, enforcement, and the role of specialized courts. HKG officials reaffirmed their commitment to upholding a strong IP regime; however, they concluded that it would be difficult for Hong Kong to move ahead on ACTA in the near future due to ongoing internal public consultations on expanding copyright protections for the digital age as well as concerns that Hong Kong's participation could cause friction with its mainland counterparts. HKG officials asked that the USG keep them apprised of the development of ACTA, with the possibility of joining at a later date. In follow-up conversations with AmConGen EconOff, HKG officials again expressed concern over possible mainland Chinese reactions to ACTA, particularly if the trade agreement ever expanded to include Taiwan. END SUMMARY.

12. (SBU) Steven Selby, Director of Hong Kong's Intellectual Property Department (IPD), chaired Hong Kong's participation in the ACTA DVC along with Priscilla To, Principal Assistant Secretary of the Hong Kong Commerce, Industry and Technology

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Bureau. Selby asked Stan McCoy, Chief Negotiator for IP Enforcement and Deputy Assistant U.S. Trade Representative for IP Enforcement, for a brief overview of the ACTA concept. McCoy responded that ACTA would set an IP example to the world by partnering economies with strong interest in IP protection. McCoy informed the HKG that, in addition to co-lead Japan, the USG had discussed the idea with some G-8 members, Singapore, Switzerland, Mexico and Morocco, all of whom have indicated varying degrees of willingness to discuss the proposal. Selby expressed specific interest in whether countries that are not fully compliant with TRIPS would be considered as possible partners. McCoy responded that Mexico and Morocco -- two developing economies that have professed a strong interest in improving IP protection -- are being considered, but characterized participation by these types of countries as "high ambition." Selby further questioned McCoy about the timeline for the agreement, asking whether a

minimum group of economies must agree to it before negotiations move forward. McCoy responded that there is no minimum number needed, but that the USG would like to bring together as many countries and economies as possible.

¶3. (SBU) The HKG inquired whether ACTA would be a binding agreement and what sort of flexibility might be included for economies that find it difficult to agree to certain provisions, such as those on specialized IP courts. McCoy answered that the USG hopes ACTA partners can voluntarily come to a binding consensus on all provisions. With regards to the specialized courts, he stated that the final version of ACTA could include flexible language that stresses the importance of developing specialized IP expertise, but leaves it to individual partners on how to develop that expertise. The HKG also inquired about ACTA's focus on enforcement and not on the scope of protection. USTR officials responded that the scope of protection is already addressed through WIPO and other fora, but that ACTA's focus on enforcement would help governments respond to transnational organized and IP crime.

¶4. (SBU) The HKG concluded the meeting by reiterating its interest in further solidifying its IP regime. Selby described how Hong Kong already meets 70% of the provisions in ACTA, but that some clauses, particularly the 'notice and takedown' provision, could be problematic at present for the HKG. Hong Kong recently began a public consultation process on how it should further protect IP in the digital age, including a possible 'notice and take down' clause. Selby stated that this process will take at least a year and that the HKG could not move too far ahead on ACTA until this process ends. Selby also stressed that Hong Kong values its relationship with the U.S. and has worked hard to create stronger levels of IP protection than most of its neighbors. However, he underscored that Hong Kong receives no benefits

HONG KONG 00000218 002 OF 002

from its main trading partner (mainland China) for its stronger IP regime and has to consider its international positions on IP in relationship to concerns on the mainland. He asked that the United States keep Hong Kong fully informed of the progress of ACTA, but stated that the HKG at present would delay entering into formal discussions. Hong Kong for now would like to "remain at the ACTA table," but primarily as an observer.

¶5. (C) After the DVC ended, the HKG participants briefly discussed the ACTA proposal with AmConGen Hong Kong EconOff. They were pleased that USTR has enough confidence in the HKG's IP regime to place Hong Kong in the same rank as the G-8, Switzerland, and other potential ACTA partners. However, they appear cautious on how mainland officials might interpret Hong Kong's participation. The HKG seems concerned over the optics of being held up too prominently as an international model in contrast to mainland China. As a result, they appear willing to downplay their own IP achievements for the sake of their mainland counterparts' "face."

¶6. (C) Priscilla To and Stephen Selby also queried EconOff on whether Taiwan would be invited to join this agreement at some point in the future. EconOff followed up with USTR on any potential participation by Taiwan. EconOff later responded to the HKG that the U.S. has not spoken with Taiwan about ACTA and has no plans at present to include Taiwan. Stephen Selby replied by stating: "Please make sure you keep the Taiwan question in the back of your mind. No matter how you express Taiwan (even if in WTO terms), if Hong Kong is part of ACTA and Taiwan ever becomes part of it -- but the mainland is not -- it would cause us great difficulty here in Hong Kong." Selby then informed EconOff that the DVC and follow-up information were extremely useful and he would convey the information on Taiwan to others in the HKG for further consideration.

¶7. (U) The following is a list of participants in the January 12 ACTA DVC:

Hong Kong Government:

Peter Cheung, Deputy Director, Intellectual Property Department

Eugenia Chung, Assistant Secretary for Commerce, Industry and Technology (Commerce and Industry)

Pancy Fung, Assistant Director of Intellectual Property Department

Stephen Selby, Director, Intellectual Property Department

Priscilla To, Principal Assistant Secretary for Commerce, Industry and Technology (Commerce and Industry)

U.S. Government:

Rachel Bae, Director for Intellectual Property and Innovation, USTR

Tim Browning, Attorney Advisor, Office of Enforcement, USPTO

Amy Celico, Senior Director for China and Hong Kong, USTR

Stan McCoy, Chief Negotiator for IP Enforcement and Deputy Assistant U.S. Trade Representative.

¶8. (U) Stan McCoy of USTR has cleared this cable.

Cunningham